

Minority Report

Paid Family Leave Task Force

We were dismayed when E2SSB 5659 passed the Legislature with critical components missing, including failure to identify a funding source and failure to select an agency to implement the program. A Family Leave Task Force was established to fill in the blanks left by the Legislature. In addition to our disappointment with the bill, we are further discouraged with the operation of the Task Force. Important issues went without a full discussion, and it seems that other issues were side-stepped. Critical issues are still unresolved and some are being left to an agency to decide, which is contrary to both the legislation and the creation of the task force. We believe this process is going in a direction that is at the very least counter to common sense. It is irresponsible to continue down this path with no long-term funding plan and a lack of agreement on implementation and administration details.

We continue to be concerned that, even before these details have been discussed, advocates have testified before the Task Force that they will seek to expand the scope of benefits available under this program to include higher benefit levels and publicly-financed benefits for medical leave. Does it really make sense to expand a program that has so many flaws it cannot be implemented by the Oct. 1, 2009 deadline and is in such disarray?

Some of the decisions currently underway on this issue are being made for political reasons rather than practical ones. For instance, we believe the majority has decided to fund the start-up costs out of the general fund in order to avoid raising payroll taxes in an election year. Once the benefits begin, there will have to be a decision to raise taxes in order to keep the program solvent. This was one of the fundamental purposes of the Task Force – to determine how the program will be funded. The majority has chosen to postpone the decision; a move we believe is irresponsible. A simple solution would be to permanently fund this new social entitlement in the general fund so that it can at least be budgeted within the context of other state social priorities.

At this point, despite the many meetings of the Paid Leave Task Force, we feel that we are in no better position to answer a number of critical questions than we were before the task force began. Here are some of our major concerns, broken out by issue area:

Financing:

- One of the most glaring problems is the excessive **cost of administration versus benefits**;
- According to fiscal estimates, there will be about **\$10 million in preliminary startup costs**;
- Once the program reaches “maturity” after six years, there could be up to **\$87 million paid out for benefits** each biennia. It could be less but we have no way of knowing;

- What we do know is that ongoing **administrative costs will be at least \$16 million** per biennia (This does not include additional costs for Labor and Industries to handle the employment law portion of the program);
- In addition, this does not include the cost of collecting a tax to pay for these benefits or for funds, including interest, to pay back additional start-up money borrowed from the workers' compensation fund. These are very substantial costs based on fiscal estimates provided to the task force.

Policy Issues:

- There are many questions about how a family leave benefit will integrate and/or **conflict with the other four leave laws we have in our state**: Federal Family and Medical Leave Act, State Family Leave Law, State Family Care Act, and the State Pregnancy Discrimination Law. This is a tremendous administrative burden to employers, who will be left to figure out which law applies when and what requirements apply to them;
- How will the Family Leave benefit work with **unemployment insurance benefits and taxes**? The task force recommended non-charging benefits for temporary workers who are hired to replace workers on family leave. This increases socialized costs in the system, which will increase taxes for all employers. This may also complicate our efforts to reach compliance with the federal government;
- For seasonal workers, such as those in agriculture or retail, the bill appears to allow the worker to receive the benefit after the season ends, and thereafter demand job reinstatement. Since there is little work available at that time, the **farmer or other employer could be forced to re-instate a person to a job that does not exist**;
- Why shouldn't we allow **employers who already provide a more comprehensive benefit** to opt-out of the program?;
- Why shouldn't there be some kind of **means/income level testing**? Is it fair to have lower income families paying for benefits for higher income families? This will more than likely be the case under the current structure of the program;
- The statute allows individuals who are ineligible to legally work in the state to receive this benefit. If that is not the intent of this program, the Legislature should pass a bill that clearly makes that change;
- Advocates talk about low wage earners, but **high paid employees and those with paid leave programs** will also receive this public entitlement benefit.

Administration:

- The Task Force was charged with determining which existing agency would administer the program. Several agencies made presentations before the committee explaining the positives and pitfalls of running the Paid Leave Program, but in all cases none could deliver the benefits by the required Oct. 1, 2009 effective date;

- The Employment Security Department was selected to administer the program, but representatives of the agency have clearly stated that **they need 22 months to fully implement the program**. This timeline would leave the agency out of compliance with the law's deadline of Oct. 1, 2009.
- Therefore, the program should either be delayed or the **Legislature must clearly authorize a third-party administrator to run the program**. This option would not only save taxpayers money on administration, it would also ease the administrative burden placed on our employers.

Technical Issues:

- The bill appears to allow a person to collect benefits, **even if he or she wasn't working**;
- **This is clearly an entitlement benefit**. Even though it's called an insurance program, there are no elements of insurance included;

The Task Force does not know the full cost of the program, which must include the cost of collecting whatever tax is eventually chosen to fund the benefit. The Task Force hasn't addressed a number of important issues and questions detailed above. Additionally, the group has not offered an adequate opportunity for the private sector to work with the state to administer the program. What we do know is that the administrative costs are excessive when compared with the benefit to be paid out. Furthermore, the Employment Security Department has told us that it needs 22 months to create, in effect, a new sub-agency to administer the program since they cannot legally administer this program within their existing structure.

With so many uncertainties still remaining, we must look at California, the only other state that has implemented such a benefit. Even though they already had the administration in place, Gov. Schwarzenegger has stated that the program is confusing and makes California appear unfriendly to business. He has vetoed expansion of the program at this time.

While this benefit was developed by well-intentioned people, we see no way to make this program work in a fair and sustainable manner. The only logical and responsible choice is to delay the benefit until these issues are resolved. If they cannot be resolved, and so far that is the case, the program should be suspended.

Submitted by:

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